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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 35

FRANK CARLSON, MIRIAM CHRISTINE STEVENSON, DAVID HYUN, AND HARRY CARLISLE,
Petitioners,

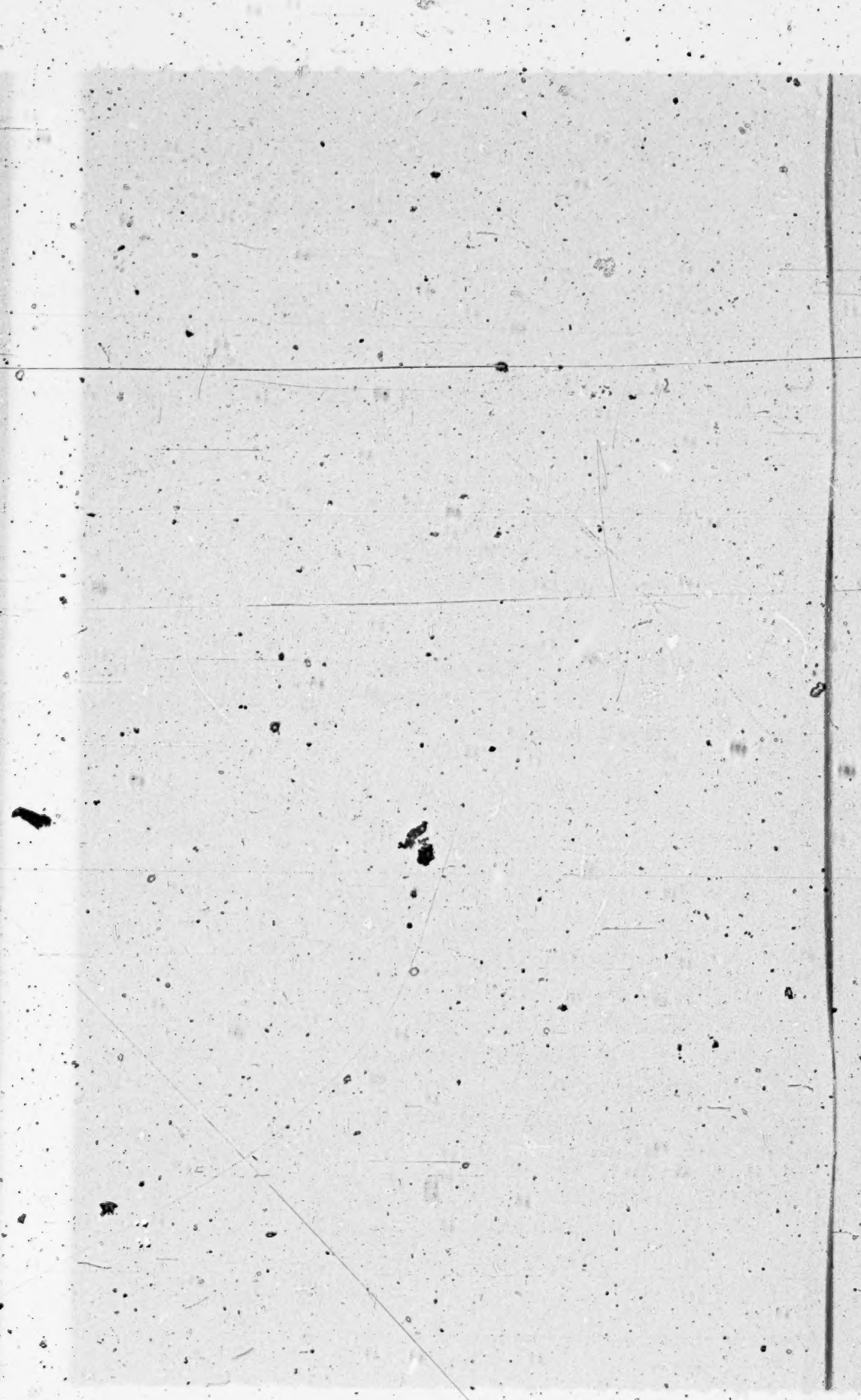
vs.

HERMAN R. LANDON, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

MARGOLIS and MCTERNAN,
By JOHN W. PORTER,
Los Angeles, California,
Counsel for Petitioners.

BEN MARGOLIS,
WILLIAM B. MURRISH,
ROSE R. ROSENBERG,
STANLEY FLEISHMAN,
MILTON S. TYRE,
Los Angeles, California.
CAROL KING,
New York, New York.
A. L. WIRIN, *Attorney,*
American Civil Liberties Union,
Southern California Branch,
Los Angeles, California,
Of Counsel.



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 53

FRANK CARLSON, MIRIAM CHRISTINE STEVENSON, DAVID HYUN, AND HARRY CARLISLE,

Petitioners,

vs.

HERMAN R. LANDON, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioners pray that a Writ of Certiorari issue to review the decisions and judgments of the United States Court of Appeals for the Ninth Circuit, rendered March 13, 1951 (R. 350-3),[1] affirming in a single opinion orders of the United States District Court in and for the Southern District of California, Central Division, rendered January

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[1] Meaning, Transcript of Record, pages 350 to 353, inclusive.

22, 1951 (R. 65-6; 107-8; 144; 175-6), denying petitioners' respective petitions for habeas corpus and dismissing writs of habeas corpus theretofore issued.

Jurisdiction

The judgments of the Court of Appeals were rendered and filed March 13, 1951 (R. 350-3). The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1) and 2101(c).

Opinions Below

The cause herein was before the District Court and the Court of Appeals upon two occasions. The initial opinion of the District Court (R. 18) is reported in *Ex Parte Carlson*, 94 F. Supp. 18. The initial opinion of the Court of Appeals (R. 28; 111; 149; 180) is reported in *Carlson* v. *Landon*, 186 F. (2d) 183, related case, *Mangoang* v. *Boyd*, 186 F. (2d) 191. The District Court wrote no opinion in rendering its second judgment (R. 65-6; 107-8; 144; 175-6). The second opinion of the Court of Appeals (R. 331) is reported in *Carlson* v. *Landon*, 187 F. (2d) (Adv. Ops.) 991.

Statute Involved

The statute involved in the cause herein is section 20(a) of the Immigration Act of February 5, 1917, as amended by section 23 of the Internal Security Act of 1950. In material parts the said statute, as amended, provides as follows:

> "Pending final determination of the deportability of any alien taken into custody under warrant of the Attorney General, such alien may, in the discretion of the Attorney General (1) be continued in custody,

or (2) be released under bond in the amount of not less than $500.00, with security approved by the Attorney General; or (3) be released on conditional parole. It shall be among the conditions of any such bond, or of the terms of release on parole that the alien shall be produced, or will produce himself, when required to do so for the purpose of defending himself against the charge or charges under which he was taken into custody and any other charges which subsequently are lodged against him, and for deportation if an order for his deportation has been made."

Statement of the Matter Involved

The proceedings here are in habeas corpus. Petitioners are aliens, presently and ever since October 21, 1950[2] detained in custody and denied bail absolutely by the respondent District Director of the United States Immigration and Naturalization Service, Department of Justice, upon the orders of the Attorney General (R. 42; 91; 132; 162).

Prior thereto, between October 1947 and June 1950, upon dates unrelated one to the others, deportation proceedings were initiated against each of petitioners, charging each of them with being

> "... an alien who is a member of and affiliated with an organization, association, society and group that believes in, advises, advocates and teaches the overthrow by force or violence of the Government of the United States, in violation of the Act of October 16, 1918" (R. 45; 94; 134-5; 165).

Each of petitioners was admitted to bail in said proceedings, the sums fixed therefor varying between $1,000.00 and $5,000.00 (R. 45; 95; 135; 166). Each of petitioners abided

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[2] October 23, 1950 in the case of petitioner Miriam Stevenson.

faithfully by the terms of his bail. It is undisputed by the respondent that each petitioner

> "... at all times ... has been, now is, and will continue to be, available to appear and will appear at any and all hearings and other lawful proceedings in connection with the determination of his deportability;" (R. 5-6, 49; 73, 99; 156, 170; *semble* 115-6, 139).

On October 21, 1950 respondent caused petitioners Frank Carlson, Harry Carlisle and David Hyun to be arrested, notwithstanding their obedience to bail (R. 4; 154; 117) and ever since said date respondent has, and now does, detain said petitioners absolutely and without right to bail in any amount (R. 5; 156; 117). On October 23, 1950 respondent similarly proceeded against petitioner Miriam Stevenson (R. 71-2).

October 24, 1950 petitioners filed their respective petitions for habeas corpus herein and the writs prayed were issued by the District Court.

October 31, 1950 respondent caused each of petitioners to be served with new warrants of arrest, charging each petitioner to be deportable on the ground of being

> "... after entry ... an alien who was a member of the Communist Party of the United States of America;" (R. 4; 72; 117; 155).

This change in the warrant rendered the original writs technically moot. Accordingly, petitioners filed new petitions November 2, 1950 and new writs issued thereon. Thereupon, in answer to the issued writs, respondent filed returns in each of the proceedings, justifying his detention of each of petitioners upon the ground in each instance

> "That there is reasonable cause to believe that if the said petitioner were enlarged on bail he would engage in activities which would be prejudicial to the public

interest, and would endanger the welfare and safety of the United States." (R. 11; 79; 125).

The District Court held this justification good and sufficient and discharged the writs (R. 24; 86), filing a written opinion (R. 18). Upon appeals from those orders the Court of Appeals, in its first decision herein, held the return insufficient as a matter of law and remanded for further proceedings (R. 28; 111; 149; 180).

Thereafter, the respondent filed in the case of each of the petitioners a new return (R. 40; 89; 130; 160) with an annexed affidavit (R. 45; 95; 135; 166) and, after traverse, a supplemental return (R. 55; 99; 139; 171). In these returns and affidavits the District Director justified his incarceration of petitioners upon the grounds that they were members of the Communist Party of the United States. That, and no more.

The District Director claimed for the Attorney General authority to so confine petitioners under section 20(a) of the Immigration Act of February 5, 1917, as amended by section 23 of the Internal Security Act of 1950 quoted in material parts earlier herein.

As to each petitioner the respondent set forth in an affidavit, executed by him and attached to his return, a narration of statements, speeches, publications and attendance at or participation in meetings, in each instance affecting and relating to either the Communist Party or other organizations "designated by the Attorney General as Communist", including the Civil Rights Congress, the American League for Peace and Democracy, the People's Educational Center, the League of American Writers and the American-Russian Institute. As to petitioners Stevenson, Hyun, and Carlisle, these activities were past only, the most recent in date being in the year 1948 as to petitioner

Stevenson, and 1949 as to both petitioners Hyun and Carlisle.

Upon the basis of these said activities on the part of each petitioner, summed up in the concluding sentence in each of the returns as "tending to establish the said petitioner's current affiliation with and activity on behalf of the Communist Party", the Acting Commissioner of Immigration and Naturalization, acting for the Attorney General, concluded as to each petitioner

> "that if the said petitioner were enlarged on bail he would engage in activities which would be prejudicial to the public interest, and would endanger the welfare and safety of the United States." (R. 44; 93; 133; 164).

The District Director in his return and affidavits made no claim whatever of the commission of any unlawful act by any of petitioners. Additionally, as previously stated, it was not disputed by the District Director that while at liberty under bail petitioners had always held themselves available and answerable under the deportation proceedings directed against each of them and if enlarged would continue to be available and answerable.

The District Court, this time without written opinion, again held the District Director's justification for detaining each of the petitioners sufficient and denied each of the petitions for habeas corpus and discharged each of the writs (R. 65; 107; 144; 175).

Upon appeal, the Court below affirmed. It ruled that while the statutory power of the Attorney General, above cited and quoted, to grant or withhold bail pending deportation was not an arbitrary or unreviewable power, it was not limited to the object of securing availability but

included the authority claimed by the Attorney General to incarcerate for "protective custody" purposes.

It ruled further that in pursuit of that purpose, since petitioners might be taken upon the record to be present members of the Communist Party, the Attorney General might by token of that alone incarcerate them and deny bail without claim or proof personal to any petitioner that he ever had committed or likely ever would commit any unlawful act. This ruling it justified upon the rationale that the outlaw character of every member of the Communist Party, as criminal traitors purposing and seeking "to maim [and] destroy our government by force and violence", has been established—not merely for purposes of newspaper editorials or political diatribes, but even for purposes of governmental acts affecting individual liberty and subject to judicial review—by the weight and force of "the legislative findings set out in the Internal Security Act of 1950", supplemented by judicial notice. This "proof" of the Communist Party's criminal character and of the attainder of all its members the Court below termed "incontrovertible" (R. 339).

Reasons for Granting the Writ

The Court of Appeals for the Ninth Circuit below has rendered a decision in the cause herein which is in conflict with the decision of the Court of Appeals for the Sixth Circuit in *Zydok* v. *Butterfield*, March 26, 1951, 6 Cir., 187 F. (2d) 802, a copy of which is appended to this petition as Appendix A.

Moreover, in determining that and other questions raised in the case at bar the Court below has decided important questions of Federal law of greatest import, both statutory and constitutional, which have not been, but should be, settled by this Court, and has decided the same in a manner

inconsistent with the principles contained in the decisions of this Court which bear most closely thereon.[3]

I.

The Decision Below Is in Conflict With the Decision by the Court of Appeals for the Sixth Circuit in Zydok v. Butterfield, Decided March 26, 1951.

The decision of the Court below sustained petitioners' confinement under the Attorney General's bail powers, despite the conceded fact that each of petitioners had always held himself available while previously enlarged on bail and that no grounds existed to believe that if bail were to be renewed, any of the petitioners would forfeit bail or fail to appear at and hold himself answerable under any and all further deportation proceedings. The Court below sustained the incarceration despite the further fact that the respondent District Director in his affidavits and returns made no claim that any of petitioners had ever committed personally a single unlawful act or had ever said or done anything rendering it likely to expect that he ever would commit any such act.

Upon a record precisely parallel, the Court of Appeals for the Sixth Circuit in *Zydok* v. *Butterfield*, cited *supra*, held an alien detained in identical circumstances was entitled of right to release on habeas corpus. In an opinion written by Chief Justice Hicks, the Court in the *Zydok* case said:

> "Before his second arrest and while he was at large on bail he reported regularly to the Department of Immigration and Naturalization Service. The record fails to disclose that he has violated any law or that

[3] Because of the important civil liberty issues herein, A. L. Wirin, attorney, American Civil Liberties Union, Southern California branch, is appearing on behalf of the petitioners herein of counsel.

he is engaged or is likely to engage in, any subversive activities. . . .

"The deportation proceedings against appellant have been pending since October, 1949 and there is no indication of an early termination thereof. In the meantime appellant is confined in jail.

"The purpose of granting bail is to secure the presence of appellant when and as required. The denial of it is not intended as punishment. If bail is granted in some fair amount there is no reasonable ground to indicate that appellant would forfeit it.

* * * * * * *

"We think that a fair consideration of the factors above set out in their aggregate requires that appellant should have been granted bail in some reasonable amount. This view is more nearly in accordance with the spirit of our institutions as it relates even to those who seek protection from the laws which they incongruously seek to destroy. See *Carson (sic)* v. *Landon, Dist. Director, etc.*, (C. C. A. 9), decided Dec. 16, 1950; *United States* v. *Dist. Director, etc.*, 169 F. (2d) 747, 752 (C. C. A. 2)."

The parallel of the cases is precise. Of the affirmative side of the life of the alien incarcerated in the *Zydok* case, the Court there observed:

"Appellant was seventeen years of age when he arrived in this country from Poland in 1913. Since then he has lived continuously in the State of Michigan. He has been a waiter in an English speaking restaurant in Hamtramck, Mich., for seventeen years and for a great part of that time he was head waiter. He owns his own home in Detroit and has a family consisting of his wife, two sons, a daughter, and five grandchildren. Both sons served in the armed services of the United States in World War II. His children and grandchildren were born in this country and his daughter married here. During World War II

while appellant was head waiter in the restaurant he sold about $50,000.00 worth of U. S. War Bonds and during that period he donated blood on seven occasions to the Red Cross for the United States Army.''

This is almost interchangeable in body and content with the observations of the Court below respecting the life history of petitioner David Hyun:

> ''We take the personal history of this appellant as set up in his petition for issuance of the writ, from our former opinion and order reversing and remanding as of December 20, 1950 (186 F. 2d 190), as follows:
>
> '' 'Petitioner Hyun was born in Seoul, Korea; is 33 years of age; was taken to Hawaii at an early age and resided there until December, 1947. His schooling resulted in a bachelor of science degree. In school he appears to have been a leader in social and religious activities. Although disqualified for military service during the late war because of his status as an alien, he became Captain of Reserve Officers Training Corps at the University of Hawaii. He has applied for citizenship; is married and has two minor sons. He has resided in Los Angeles, California, since December, 1947, and has engaged in a useful occupation. Petitioner's petition is replete with a detailed account of his life.' ''[4]

The only words or acts personal to the petitioners of which the government complained in the case at bar (apart from Communist Party membership *per se*) consisted of no more ''unlawful'' matters than mere acts of assembly, speech and publication—all not merely negatively not un-

[4] (R. 343-4). The personal histories of the other petitioners, set forth at other portions of the opinion below, were comparable. They reflect the fact in each instance that the respective petitioners were stable, respectable members of the community, supporting families through pursuit of lawful means of livelihood.

lawful but affirmatively constitutionally protected. Thus, of petitioner Stevenson the whole of the government's claim, as set forth in the District Director's affidavit, quoted in the opinion below, was:

> ". . . with respect to petitioner Stevenson the Service is in possession of evidence showing that she has been a member of the Communist Party of the United States and has actively participated in its program; more specially that the petitioner was a Unit Organizer and a member of the Hollywood Subsection Committee of the Communist Party in 1936; that she was the Secretary of a Communist Party Unit in 1938; that she participated in the 'Lenin' celebration in Los Angeles; that she admitted in 1948 attending Communist Party meetings and also admitted membership in the American League for Peace and Democracy (an organization designated by the Attorney General as Communist, F. R. 315, No. 231); and that in 1950 at a deportation hearing she refused to answer questions concerning her membership in the Communist Party on the ground of self-incrimination; . . ."[5]

Precisely comparable acts and activities by the alien were pointed to and relied upon in the *Zydok* case. Thus, the Court there noted that:

> "It is undeniably true that appellant was, before his original arrest, a member of the Communist Party and was financial secretary of the Hamtramck Division of the Communist Party of Michigan for the year 1949 and that as such secretary he assisted in the collection of funds to be used in the defense of the Communist Party leaders who were tried and convicted in New York under the Smith Act (18 U. S. C., Sec. 2385)

[5] (R.342-3). The complaints against the other petitioners were of a similar vein. Thus, of petitioner Hyun the Government complained, among other things, that he had helped form a branch of the Hawaiian Civil Liberties Committee on the west coast and that that organization had been designated by the Attorney General as a Communist organization.

of conspiring to advocate the overthrow of the Government and that the United States Department of Justice had information to that effect when appellant was rearrested."

Notwithstanding such activity by Zydok and notwithstanding even that the activity was on behalf of the Communist Party, the Court held Zydok entitled to bail of right. Relying upon the decision of Mr. Justice Jackson in *Williamson, et al.* v. *United States,* Sept. 25, 1950, 95 L. Ed. (Adv. Ops.) 10, the Court ruled that the bail power might not be made a pretext to punish peaceful and lawful conduct whether on behalf of the Communist or any other party where, absent the bail power pretext, such conduct could not be made subject to penalty.

The decision at bar is in direct conflict with the decision in *Zydok* v. *Butterfield.* It is in conflict, too, with the decisions of fifteen District Court Judges throughout the nation who have been called upon in habeas corpus actions to review the detention of aliens arrested under circumstances similar to the circumstances at bar. Like petitioners here, the aliens in all of those proceedings, after previous enlargement on bail pending hearings in deportation proceedings, were rearrested and denied bail absolutely upon the grounds that enlargement endangered "national security". The fifteen proceedings, affecting thirty-eight aliens, together with the case at bar and the *Zydok* case, affecting five, represent nationwide litigation precipitated by simultaneous arrests. Of all affected aliens the habeas corpus proceedings have resulted in release upon reasonable bail for all save petitioners here.[6] A summary of the District Court cases and their disposition in each instance is annexed hereto as Appendix B.

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[6] One of the others was released on bail pending appeal only. *In Re Heikinen,* Case No. 1101 (D. Minn.).

II.

The Imprisonment of Petitioners by the Respondent District Director Cannot Be Sustained in View of the Total Absence of Any Showing Personal to Any of Petitioners That Any of Them Had Ever Done or Likely Would Ever Do Any Unlawful Act.

The purpose of the writ of habeas corpus is "to inquire into the cause of imprisonment." *Graham* v. *Squier*, 9 Cir. 132 F. (2d) 681, 683; *Price* v. *Johnston*, 9 Cir., 144 F. (2d) 260, 261; *Wong Sun* v. *United States*, 6 Cir., 293 F. 273, 275. Once the writ is issued the burden is on the detaining authority to justify the detention. By the statute he is required to make a return "certifying the true cause of the detention." 28 U. S. C. A. 2243. Where the officer to whom the writ is directed admits the custody or imprisonment he "must . . . justify such custody or imprisonment of the person by the law, or that person must be discharged . . ." *In re DeLondi*, 2 Fed. Supp. 256, 257;[7] *Wong Sun* v. *United States*, *supra*; *Wales* v. *Whitney*, 114 U. S. 564, 571.

Consistent with these fundamental principles the District Director was under burden below to come forward under command of the writs and *justify* his detention of petitioners. Detention of one adult human being by another requires affirmative showing of lawful and constitutional right. Thus, had the respondent, for example, had custody of petitioners under a judgment of conviction for crime rendered by a court of competent jurisdiction he was burdened to produce it.

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[7] The decision in this case was later reversed *sub nom. Warden etc.* v. *Landi*, 5 Cir. 62 F. (2d) 981. The lower court had held the warden's proofs justifying the detention insufficient. The Court of Appeals held them sufficient. But the latter court expressed no disagreement with the reasoning of the lower court quoted above.

Here, the District Director purported to justify his confinement of petitioners under the bail powers granted the Attorney General by section 20(a) of the Immigration Act of February 5, 1917, as amended by section 23 of the Internal Security Act of 1950, set forth in the Statement of the Matter Involved, *supra*. In so doing, he pointed to no cause to believe—and claimed none—that petitioners would flee or secrete themselves if enlarged on bail. He stated merely that he had satisfied himself they were members of the Communist Party and that, as such, he had concluded that if left at liberty they would "engage in activities which would be prejudicial to the public interest, and would endanger the welfare and safety of the United States." (R. 44; 93; 133; 164).

But this was far from a sufficient showing on habeas corpus. Abuse of the bail powers is not beyond reach of the law. Indeed, it was against arbitrary denials of bail that habeas corpus was historically "especially, although not exclusively, directed", as this Court has observed in commenting upon The Habeas Corpus Act of 31st Charles II, the parent statute from which flows all later habeas corpus law, American as well as English. *McNally* v. *Hill*, 293 U. S. 131, 137, n. 1. A primary purpose of that historic Act was to insure that habeas corpus would reach to and liberate persons held in jail upon "suspicions which could not be sustained by evidence." *Ex Parte Watkins*, 3 Peters 193, 202.

The case at bar is such a case of imprisonment upon an arbitrary suspicion. Not a single thing personal to petitioners has been claimed or proved. All that has been

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[8] More accurately, the Acting Commissioner of Immigration and Naturalization, acting for the Attorney General, and acting, also, as respondent District Director's superior. Hereafter, this chain of office, for simplicity purposes, will be deemed included within references to either the Attorney General or the District Director as individuals wherever such inclusion is appropriately called for.

claimed is that they were affiliated with the Communist Party. For this claimed membership *per se*, a claimed act of merest association, they have been denied individual liberty.

But it is fundamental in American law that guilt is individual. It is abhorrent to the rudiments of our justice to judge a man or attaint him because of his family, his creed, or his associations only. As Charles Evans Hughes, later Chief Justice Hughes, has said, "... it is of the essence of the institutions of liberty that it be recognized that guilt is personal and cannot be attributed to the holding of opinion or to mere intent in the absence of overt acts; ..."[9]; *Schneiderman* v. *United States*, 320 U. S. 118; *Bridges* v. *Wixon*, 326 U. S. 135; *DeJonge* v. *Oregon*, 299 U. S. 353; *Herndon* v. *Lowry*, 301 U. S. 242; *Baumgartner* v. *United States*, 322 U. S. 665.

Membership in the Communist Party on the part of an individual represents merely a lawful act of assembly and association. That party is as much entitled to enter the marketplace of speech and ideas and compete therein for members and adherents as is any other group or political party.

Additionally, even were it to be assumed arguendo that among the tenets of the Communist Party some were to be deemed to possess unlawful content, no conclusion that such unlawful matters had been accepted or embraced by, or that the tenets in question had been so viewed and understood by, any one or more individual members of that organization could be predicated upon their membership *per se*. *Schneiderman* v. *United States*, *supra*, at pp. 136, 154-5; *Bridges* v. *Wixon*, *supra*, at p. 143.

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[9] Memorial of the Special Committee Appointed by the Association of the Bar of the City of New York, New York Legislative Documents, Vol. 5, 143rd Session (1920), No. 30, p. 4.

For guilt by association is particularly improper and wrongful where applied to association borne of opinions and ideas rather than of conduct. Joinder with others in a pattern of claimed unlawful acts is one thing: joint participation in a pattern of burglary, for example, might reasonably justify imputed responsibility under conspiracy principles for burglaries committed subsequently by others within the conspiratorial association. Not so with association borne only of common opinions and ideas. There the significance of the association must be far more cautiously measured. *Schneiderman* v. *United States*, *Bridges* v. *Wixon*, *Baumgartner* v. *United States*, all *supra*; *Knauer* v. *United States*, 328 U. S. 654, 669. For the acceptance, understanding and interpretation of ideas are acts peculiary individual in character. *Schneiderman* v. *United States*, *supra* at pp. 154-155; *Bridges* v. *Wixon*, *supra* at p. 143.

Of right and of principle individuals are to be judged by their own words and acts alone. They cannot, as here, be subjected to "preventive imprisonment" because friends, family or associates are believed to be possessed of "treasonable" thoughts.

III

The Statute Does Not Authorize Incarceration for "Security" Purposes If Construed and Applied So to Do the Statute would Violate the Eighth Amendment and Would So Pervert the Process of Bail As to Pefmit Without Statutory Standard and at the Utter Discretion of the Attorney General What Could Not Constitutionally Be Done—at Least While Courts of Law Remain Open—by the Most Carefully Drawn of Statutory Schemes.

The statute, previously cited, under which the Attorney General has incarcerated petitioners without leave to bail as "security risks" grants no such power as that to which

the Attorney General pretends. In material part the statute provides:

> "Pending final determination of the deportability of any alien taken into custody under warrant of the Attorney General, such alien may, in the discretion of the Attorney General (1) be continued in custody; or (2) be released under bond in the amount of not less than $500.00, with security approved by the Attorney General; or (3) be released on conditional parole."

The statute is a *bail* statute not a private license to imprison at will. Bail has a settled significance and purpose in law, a purpose which Congress must have had in contemplation when enacting the statute. That purpose is not detention *qua* detention but detention only where necessary to secure the availability and answerability of the accused to the substantive charge, criminal or civil, preferred against him.

Since the earliest years of the common law, bail has been recognized as a means of securing the appearance of a respondent. Purely auxiliary to a judicial proceeding, its function traditionally has been to provide an alternative to custody "by giving a form of security, property or bail to assure future appearance in court." 6 University of Toronto Law Journal 385, *Concepts of the Nature of Bail in English and American Criminal Law* (1946). See also *Sparhawk* v. *Bartlett*, 2 Mass. 188 (1806); *Hudson* v. *Parker*, 156 U. S. 277, 285.

Indeed, the original use of the term "bail" was to designate the sureties in whose custody the defendant was released. "Bail are sureties taken by a person duly authorized for the appearance of an accused person at a certain day and place to answer and be justified by law." Dalton's *County Justice*, ch. 166, part 2 (1796). As a power and

instrument of the law it has always served the one "purpose of securing the attendance" of the accused at necessary stages of the principal case. *McKnight* v. *United States*, 113 F. 451, 453; see generally, Petersdorff, *The Law of Bail* (1835).

Not being intended as the infliction of punishment, the bail power may impose imprisonment pending trial upon the impecunious, whether guilty or innocent. But equally, since its purpose is availability alone, bail lies of right where it lies at all. This has been the rule from the earliest common law:

> "For the common law has been always so before, for the common law, which is common reason, did ever allow that such persons as were taken by writ, bill or warrant, in any action personal, or indictment for trespass, might be let at large upon sureties, for it stands indifferent in a manner whether they are guilty or not, and then if they are not guilty, and should be restrained of their liberty, it would be a great inconvenience, which the common law will never suffer . . ."
> —Montague, Ch. J., *Dive* v. *Maningham*, 1 Plowd. 60 (1550).

Chief Justice Lord Russell, three hundred and fifty years later restated the mandate of the English law as follows:

> "It cannot be too strongly impressed upon magistrates that bail is not intended to be punitive but merely to secure the attendance of the prisoner at the trial or to come up for judgment."—*Reg.* v. *Rose*, 68 L. J. Q. B. 292 (1898).

The American law has always followed and accorded with these basic principles. See, e.g., *Garvey* v. *United*

States, 292 F. 591; *Harrington* v. *Dennie*, 13 Mass. 92; *Maloney* v. *Nelson*, 158 N. Y. 351.

> "Detention pending the writ is only for the purpose of securing the attendance of the convicted person after the determination of his proceedings in error. If this can or will be done by requiring bail, there is no excuse for refusing or denying such relief."—*McKnight* v. *United States*, 113 F. 451, 453.
>
> "It will be observed that the character of the crime charged or probable guilt or innocence is not suggested as having any bearing . . . The granting or withholding of bail is not a matter of mere grace or favor."—*United States* v. *Motlow*, 10 F. (2d) 657, 662, Mr. Justice Butler sitting as Circuit Justice.

In the light of the settled purposes of the bail power there is no room for the Attorney General to pretend to authority under the statute here to institute "security" arrests. It is simply foreign to the whole nature of bail to assume under its function, as has been done here, authority to impose detention *qua* detention, without even claim of a relation to availability.

The Attorney General stresses that the terms of the statute invest him with "discretion". But the discretion conveyed by the statute is to grant or withhold bail pending determination of deportation proceedings, not to hold aliens for ransom or to nightride against political or other minorities. The discretion must be exercised to subserve availability purposes only or it passes at once the bounds of its statutory source. Here availability was undisputed; in consequence no area for discretion remained.

To accede to the Attorney General's claim that he has power under the terms of the statute here to imprison persons he deems "security risks" would be to indulge

him in a claim to wholly arbitrary authority. If under the statute he may withhold bail for supposed "security" reasons, he may likewise withhold it for any other reasons he finds appealing. He may withhold it even for political purpose. For Congress has given him no standard save the historical common law standard of availability. That passed, there are no bounds to his discretion save his own pleasure.

Moreover, if the statute were to be construed as the Attorney General would read it, it would defy both reason and the Constitution.

It would defy reason because it would be senselessly discriminatory against aliens.[10] It is not even claimed by the Attorney General that he has power generally to institute "security" arrests.

It would defy the Constitution because that instrument protects aliens and citizens alike, and each and every one among them, including the humblest and most defenseless, against arbitrary deprivations of liberty. In our nation no officer stands above the law and no person below it.

Yet the arbitrary imprisonment of petitioners in the case at bar has been without so much as an apology, let alone a right or a justification. Petitioners have been jailed by the Attorney General under the pretext of his bail powers. Yet it has not even been claimed that they ever violated the terms of their former bonds. Neither has it been claimed that they have ever committed any unlawful acts. They have been subjected to "preventive detention". They must

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[10] The statute, so far from supporting the Attorney General in perverting his bail powers to institute "security" arrests against aliens, makes express provision for "security" arrests under its second Title under circumstances and subject to conditions precedent which would not permit of the arrests below, and it does so for citizens and aliens alike. The statute thereby expressly negates the authority which the Attorney General would imply. In petitioners' view the statutory provisions treating "security" arrests are unconstitutional in themselves though that question is not here reached.

remain in jail unless they can prove they will not do what no one claims they ever have done. This Court has said, "Conviction on a charge not made would be sheer denial of due process." *De Jonge* v. *Oregon*, 299 U. S. 353, 362. What of detention, as here, without even claim that an offense exists.

The writ of habeas corpus would be a mockery if it could not release from jail persons not even accused of unlawful acts but only of "risk" that they might in the future commit such. Congress is forbidden to suspend the privilege of the writ "unless when in Cases of Rebellion or Invasion the public Safety may require it" (Art. I, Sec. 9, Cl. 2, United States Constitution).

The writ being unsuspended in fact and there being no basis for its suspension in law, it passes imagination to appreciate that these petitioners have been in jail five and one-half months to date.

Patently, in the Attorney General's eyes either aliens have no rights or bail as a power has no limits. He has jailed petitioners as he would lock up chattels in a warehouse.

Yet aliens under the Constitution have exactly the rights, liberties and protections which citizens have, no more and no less, save only that aliens unlike citizens may be held liable to deportation. *Bridges* v. *California*, 314 U. S. 252; *Yick Wo* v. *Hopkins*, 118 U. S. 356; *Bridges* v. *Wixon*, 326 U. S. 135, 148; *Schneiderman* v. *United States*, 320 U. S. 118. The same immunity from arbitrary arrests and detentions protects aliens as protects citizens. The protection of each rises from a single Bill of Rights which speaks of neither as a class but rather vouchsafes liberty and freedom to "the people" and to all "persons".

Moreover, bail as a power is expressly limited by the Constitution. The Eighth Amendment prohibits all agencies

of government from the exaction of "Excessive bail". The Amendment is not limited in its protection to citizens nor is it made applicable to strictly criminal proceedings alone. Wherever bail is available in law the Constitutional command is that it shall not be suffered to be "Excessive". This can ill be argued with, for a bail which is definitionally "excessive" is definitionally arbitrary. The Constitutional provision was cast for just such a case as the one at bar where bail has been purposefully misused to achieve detention *qua* detention without relation to securing appearance. To deny bail absolutely where availability is not merely probable but undisputed, as is the case here, is to violate both the reason and the letter of the Eighth Amendment and, by the violation, to illustrate the wisdom of the Constitutional limitation.

Finally, even were the Eighth Amendment laid aside and the Attorney General's act deemed superficially lawful, still the act would remain invalid and void. For under the Constitution not even superficially lawful powers may be used for unconstitutional ends. *Lake Shore* v. *Smith*, 173 U. S. 684, 689; *United States* v. *Butler*, 297 U. S. 1, 68; *Western Union Telegraph Co.* v. *Foster*, 247 U. S. 105, 114. "[In] passing upon constitutional questions the Court has regard to substance and not to mere matters of form" (*Near* v. *Minnesota*, 283 U. S. 697, 708) and it would be an affront to the intelligence of the drafters to suppose that the Constitution could permit Congress or other governmental representatives to achieve by evasion or disguise ends which they are Constitutionally prohibited from achieving forthrightly. See *United States* v. *Constantine*, 296 U. S. 287.

> "If so, constitutional guarantees, so carefully safeguarded against direct assault, are open to destruction

by . . . indirect but no less effective process[es] . . ."—*Frost* v. *Railroad Commission*, 271 U. S. 583, 593.

Consistent with these principles bail may not be used, as it has been here, as a mere device for incarcerating persons without even charge of offense simply because a head of government finds the views or associations of such persons distasteful. *Bridges* v. *United States*, 184 F. (2d) 881, 885-891.

> "It is not contended that these utterances in themselves are criminal. The Communist Party has not been outlawed either by legislation nor by these convictions, and its right to publish the Daily Worker is not questioned . . . Since the paper may lawfully be issued, certainly its publishers or contributors may comment critically on the Government's conduct of foreign affairs. If the Government cannot get at these utterances by direct prosecution, it is hard to see how courts can justifiably reach and stop them by indirect. I think courts should not utilize their discretionary powers to coerce men to forego conduct as to which the Bill of Rights leaves them free."—*Williamson, et al.* v. *United States*, 95 L. Ed. (Adv. Ops.) 10, 14, Mr. Justice Jackson sitting as Circuit Justice.

IV.

Petitioners' Imprisonment Below Was Held Justified Per Se by Supposed Communist Party Membership Without Evidence Affecting the Character of That Organization Save for (1) Alleged Legislative Findings and (2) Supposed Judicial Notice. To Sanction Incarceration in Such Premises Negates the Judicial Function, Offends the Constitutional Separation of Powers, Attaints the Members of An Identifiable Group and Class by Acts of Legislative and Judicial Fiat, and Violates Due Process of Law.

In the instant case the petitioners have been jailed by the Attorney General and the Court below has sanctioned and sustained their detention upon the fact alone that petitioners, upon the record, might be taken to be—for purposes of habeas corpus though not for purposes of deportation—members of the Communist Party. The premise upon which this was rested is that the Communist Party is an outlaw organization and all its members are outlaw conspirators. As "proof" "clear and incontrovertible" that the Communist Party constitutes such a conspiracy the Court below relied upon (1) a non-existent legislative attainder which would be grossly unconstitutional even if discovered, and (2) supposed judicial notice.

Witness the below excerpt from the opinion of the Court below:

> "It is said by appellant that there is no proof here as to the intention of the Communist Party of the United States or of Communists to maim or destroy our government by force and violence, and cites the *Schneiderman* case (320 U. S. 118 (1943)). The *Schneiderman* case was of yesterday. As Justice Hughes one time so expressively said, 'Courts do not

function in a vacuum.' The courts today are acquainted with current history and, too, with the legislative findings set out in the Internal Security Act of 1950, from which we quoted liberally in the first *Carlson* opinion.

"The existence as of today of a worldwide conspiracy against free democratic governments by a major world power using as its vehicle the establishment of Communism by force and violence, is perfectly clear and incontrovertible."

The conclusion to the opinion of the Court below declares that the trial court "came to the correct and legal conclusions" in "the light of the times."

The foregoing statements of law by the Court below in effect amend every article and clause in the Constitution so as to read "save and except for members of the Communist Party". Even for purposes of judicial trials and hearings, these statements outlaw that party *per se*. They relieve the government in any proceeding against claimed members of that organization from the duty to furnish proof in support of any charge it may choose to prefer against the organization. They then pronounce the proof not furnished "incontrovertible". To the remonstrance by the aggrieved individual that he has had no hearing, they reply by asking him of what he complains when a legislature he has never seen has long since tried the matters and found against him anyway. This, for the Communist Party, is justice in "the light of the times". The most elementary rights to due process, trial and hearing for persons claimed to be members of that party receive now the answer—"Those were of yesterday."

The "law of the land", as is stated in words of Daniel Webster often approvingly quoted by this Court, requires in absolute minimum "a law which hears before it condemns." *Powell* v. *Alabama*, 287 U. S. 45, 68. Indeed, that

the Constitution commands at least this much "needs nothing but statement." *Riverside and Dan River Cotton Mills, Inc.* v. *Menefee*, 237 U. S. 189, 193. As stated in *Powell* v. *Alabama, supra*, at p. 68, "It never has been doubted by this Court, or any other so far as we know", that "hearing" is a prerequisite to due process. It is so because it is required by the "immutable principles of justice which inhere in the very idea of free government and which no member of this Union may destroy." *Holden* v. *Hardy*, 169 U. S. 366, 389.

But of what avail is a "hearing" if guilt has been predetermined. What kind of trial can it be which opens with a pronouncement that the government's case has previously been established by "proof" which, though not to be produced, is none the less to be taken as "incontrovertible". To take judicial notice of guilt before even holding a trial is to make mockery of due process. As the Supreme Court of California has said with commendable restraint, "That is not the law.":

> "As was pointed out in the *Reeves* case, *supra*, to hold that this court will take judicial notice of the alleged fact that the Communist Party advocates force and violence, without any evidence of that fact, would not only require judicial notice of a fact which plaintiffs and their counsel vehemently deny, but it would also necessitate a finding that every registered communist is a felon and could be convicted of a violation of our criminal syndicalist law upon mere proof of membership in the Communist Party. That is not the law."—*Communist Party* v. *Peek*, 20 Cal. (2d) 536, 548. See also *State* v. *Reeves*, 5 Wn. (2d) 637, 130 A. L. R. 1465; *Ex Parte Fierstein*, 9 Cir., 41 F. (2d) 53, *accord*.

This Court cannot suffer the decision below to stand in the face of *Schneiderman* v. *United States*, 320 U. S. 118.

The *Schneiderman* appeal could not even have been heard had the rule of the Court below ever been well grounded. Judicial notice of guilt would have made the case moot without even necessity for appellate review of the evidence. Yet this Court there reviewed the evidence which had been taken upon trial and, upsetting two lower courts' conclusions to the contrary, found innocence had not been overbalanced.

The principles of the *Schneiderman* case are fundamental. They cannot be dismissed as good only "of yesterday". It does violence to the entire concept of due process to permit supposed "judicial notice" to displace hearing, evidence and trial. Particularly so in cases involving human liberty.

In an effort to escape in at least some measure a naked determination of guilt by judicial notice, the Court below has pointed, as has the Attorney General, to the "legislative findings" of the Internal Security Act of 1950. It is argued that that Act, which among other things included various regulations affecting aliens, explicitly or implicitly has already determined the guilt of the Communist Party as a conspiracy practicing all of the crimes of violence, sabotage and treason described in section 2 of its terms.

Were the statute to be read as the Attorney General and the Court below would read it, the statute would thereby become an attainder and a nullity in law. *McFarland* v. *American Sugar Refining Co.*, 241 U. S. 79, 86-87. "Mere legislative fiat may not take the place of fact in the determination of issues involving life, liberty or property." *Manley* v. *Georgia*, 279 U. S. 1, 6. See also *Tot* v. *United States*, 319 U. S. 463; *Morrison* v. *California*, 291 U. S. 82; *Western and Atlantic Railway Co.* v. *Henderson*, 279 U. S. 639. It is no part of the legislative function to adjudicate guilt. Legislatures enact laws; courts and courts

alone try supposed disobeyers. *Prentis* v. *Atlantic Coast Line Co.*, 211 U. S. 210, 226; *Opp Cotton Mills* v. *Administrator of Wage and Hour Division*, 312 U. S. 126, 145. Our system of law is Constitutionally predicated upon keeping separate the two functions. Articles I and III, United States Constitution; *Kilbourn* v. *Thompson*, 103 U. S. 168, 190-191.

True, both courts and legislatures often must make inquiry into facts and reach findings and conclusions respecting the same. But they do so for very different purposes, and by token of their different purposes can and do utilize dissimilar procedures and different kinds, qualities and degrees of evidence and proof. It mistakes the respective functions of the two branches of government to assume that a matter "found" by one may properly be given consequence within the processes and for the purposes of the other. The character of the "hearing" which precedes a "finding" "must be adapted to the consequences that are to follow." *Norwegian Nitrogen Products Co.* v. *United States*, 288 U. S. 294, 319. See also *Prentis* v. *Atlantic Coast Line Co., supra*, at p. 227.

Indeed, a legislature may not even make an investigation, let alone make effective findings, where the object being pursued lies exclusively within the judical as distinguished from the legislative area. Witness the below excerpt from the *Kilbourn* opinion:

> "What was this Committee [a certain Congressional investigating committee] charged to do? To inquire into the nature and history of the real estate pool. How indefinite! What was the real estate pool? Is it charged with any crime or offense? If so, the courts alone can punish the members of it. Is it charged with a fraud against the government? Here, again, the courts, and they alone, can afford a remedy."—103 U. S. 168, 195.

The foregoing principles are at the root of the specific Constitutional prohibition against Bills of Attainder. The essential vice of such legislative acts is that in them "the legislative body, in addition to its legitimate functions, exercises the powers and office of judge; . . ." *Cummings* v. *Garland*, 71 U. S. 277, 323.

Because legislatures have no lawful authority to act as judges, neither Congress nor any other legislature may by any law or legislative "finding" determine that John Doe, by name, nor all or any of the members of the "X" organization or of any other identifiable group, have violated any general law or other standard of conduct or are to be jailed, fined, deported, registered, or subjected to "security detention" or to any other civil or criminal consequence.

> "For example, it is clearly within the power of the Legislature to determine as a fact that, in the public interest, all diseased cattle should be destroyed, but it is not within the legislative power to determine that John Smith's cattle are diseased. So, while it was clearly within the legislative power to determine that, in the public interest, any party advocating the forceful overthrow of the government of the United States should be denied a place on the ballot, it is not within the power of the Legislature to determine that the Communist Party advocates the doctrine in question." *Communist Party* v. *Peek*, 20 C. (2d) 536, 549.

V.

The Statute Does Not Authorize the Imprisonment Sustained Below; If Construed and Applied So to Do the Statute Would Violate the First Amendment Securing Freedom of Speech, Press, Thought, Association and Assembly.

As noted in the Statement of the Matter Involved, *supra*, the only individual acts on petitioners' part of which

the respondent District Director made complaint below and upon the basis of which he purported to defend and justify his confinement of them, were that they wrote articles, uttered speeches and attended and participated in public meetings affecting subjects and ideas of which he and the Attorney General disapproved.

If the statute here concerned be construed to sustain the Attorney General in claiming power to so confine petitioners, the statute as construed and applied violates the First Amendment. To tolerate power in the Attorney General through his bail discretions to threaten or impose confinement for speech of which he disapproves would sanction a precedent for censorship by fear and coercion:

> "The existence of such a statute, which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview." —*Thornhill* v. *Alabama*, 310 U. S. 88, 97-98.

In sustaining petitioners' confinement the Court below noted that petitioner Carlson had written an article for a newspaper characterized by the Attorney General as the "'Daily People's World' (official West Coast organ of the Communist Party)" which bore material strongly critical of American foreign policy in Asia and "highly praising Communist China".

But freedom to criticize governmental policies, even those relating to war and peace, is bred of the heart of liberty of speech. The Attorney General, with the sanction of the Court below, would cast petitioners in jail simply for expressing such dissident ideas as that capitalism is unjust or the present government's foreign policy unwise. He

would do so upon the premise that where speech reaches questions so basic as these, suppression is warranted.

This reasoning misconceives Constitutional democracy in whole. It is precisely the most critical speech which it is most vital to society to preserve. It is within the area where criticism is sharpest and government most sensitive, where debate surges pro and con over the most crucial issues and questions, such as war and peace, alterations of governmental structure or proposals for great societal changes—it is within this area that unshackled speech is most precious and vital. *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 642.

In our system of government it is the people who act as the arbiters of all policy. For their participation in the arena of speech and opinion, wherein is resolved all ultimate societal decisions, they are and can be subject to no pain, penalty or punishment by act of government.

The Attorney General would jail ideas and close the door on freedom of speech. To uphold in him a power to so act would destroy free government, for, in the words of this Court,

> "When that door is closed, it closes all doors behind it." *Pennekamp* v. *Florida*, 328 U. S. 331, 350.

Conclusion

WHEREFORE petitioners pray that the Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit be granted, and that, in light of the gravity of the questions herein raised and the special circumstances attending the instant case, a speedy determination of the issues herein raised be had before, if possible, the expiration of the October, 1950 term.

Respectfully submitted,

MARGOLIS and MCTERNAN,
By JOHN W. PORTER,
Counsel for Petitioners.

BEN MARGOLIS,
WILLIAM B. MURRISH,
ROSE R. ROSENBERG,
STANLEY FLEISHMAN,
MILTON S. TYRE,
Los Angeles, California.

CAROL KING,
A. L. WIRIN, *Attorney,*
American Civil Liberties Union,
Southern California Branch,
Of Counsel.

APPENDIX "A"

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 11312

JOHN ZYDOK,

Appellant,

v.

JAMES W. BUTTERFIELD, Director of the Immigration and Naturalization Service, Detroit, Michigan,

Appellee

Appeal from the District Court of the United States for the Eastern District of Michigan, Southern Division

Decided March 26, 1951

Before HICKS, Chief Judge; ALLEN and MILLER, Circuit Judges.

HICKS, Chief Judge. Appeal from an order of the district court dismissing a writ of habeas corpus.

Appellant, John Zydok, an alien, entered the United States in 1913. He was arrested in August, 1949 upon a warrant issued by the Assistant Commissioner, Enforcement Division, Immigration and Naturalization Service of the United States Department of Justice. The warrant charged that he was found in the United States in violation of the Immigration Laws. The specific charge was that he was a member of an organization that advised, advocated or taught the overthrow, by force or violence of the Government of the United States; and which wrote, circulated, distributed, printed, published or displayed written or printed matter advising, advocating or teaching the overthrow, by force or violence, of the Government.

Appellant was released under bond in the sum of $2,000.00. The condition of the bond was that appellant "shall be produced when required for a hearing or hearings

in regard to the charge upon which he has been taken into custody, and for deportation if he should be found to be unlawfully in the United States." 8 USCA, Sec. 156 (Sec. 20 of the Immigration Act of 1917).

Following appellant's arrest, a deportation proceeding was instituted against him before the Immigration and Naturalization Service at Detroit, Mich., to determine the deportability of appellant and this proceeding was pending when appellant was again arrested on October 23, 1950. His rearrest was based upon the following provision of Sec. 23 of the Internal Security Act of 1950, to wit:

> "... Pending final determination of the deportability of any alien taken into custody under warrant of the Attorney General, such alien may, in the discretion of the Attorney General (1) be continued in custody; or (2) be released under bond in the amount of not less than $500, with security approved by the Attorney General; or (3) be released on conditional parole,"

and was without warrant. He was held in prison without bail; hence the writ of habeas corpus.

The pertinent question here is, whether the Attorney General abused his discretion in causing appellant to be held without bail.

It is undeniably true that appellant was, before his original arrest, a member of the Communist Party and was financial secretary of the Hamtramck Division of the Communist Party of Michigan for the year 1949 and that as such secretary he assisted in the collection of funds to be used in the defense of the Communist Party leaders who were tried and convicted in New York under the Smith Act (18 USC, Sec. 2385) of conspiring to advocate the overthrow of the Government and that the United States Department of Justice had information to that effect when appellant was rearrested. If in the exercise of sound judgment upon whether appellant should have been continued in custody, or have been released on bail, the Attorney General was limited to a consideration of the undisputed fact that appellant was a Communist, little may be urged

against his decision in view of the preamble to the Internal Security Act of 1950. But we think that in determining whether appellant should have been granted or denied bail the Attorney General had a much wider latitude for decision.

Discretion does not mean decision upon one particular fact or set of facts. It means rather a just and proper decision in view of all the attending circumstances. *The Styria, Scopinich, Claimant* v. *Morgan,* 186 U. S., 1, 9. There are many circumstances which involve decision.

Appellant was seventeen years of age when he arrived in this country from Poland in 1913. Since then he has lived continuously in the State of Michigan. He has been a waiter in an English speaking restaurant in Hamtramck, Mich., for seventeen years and for a great part of that time he was head waiter. He owns his own home in Detroit and has a family consisting of his wife, two sons, a daughter, and five grandchildren. Both sons served in the armed services of the United States in World War II. His children and grandchildren were born in this country and his daughter married here. During World War II while appellant was head waiter in the restaurant he sold about $50,000.00 worth of U. S. War Bonds and during that period he donated blood on seven occasions to the Red Cross for the United States Army.

Before his second arrest and while he was at large on bail he reported regularly to the Department of Immigration and Naturalization Service. The record fails to disclose that he has violated any law or that he is engaged or is likely to engage in, any subversive activities. The fact that he assisted in collecting funds for the aid of the Communist defendants being tried under the Smith Act can hardly be regarded as an objection to the allowance of bail, for these defendants themselves were allowed bail after the affirmance of their convictions and even during the pendency of their appeals. *Williamson, et al.* v. *United States,* U. S. Supreme Court, Law Ed. Advance Opinions, opinion by Mr. Justice Jackson, Nov. 20, 1950, pending certiorari.

The deportation proceedings against appellant have been pending since October, 1949 and there is no indication of an early termination thereof. In the meantime appellant is confined in jail.

The purpose of granting bail is to secure the presence of appellant when and as required. The denial of it is not intended as punishment. If bail is granted in some fair amount there is no reasonable ground to indicate that appellant would forfeit it.

The district court seemed of the opinion that it was the duty of appellant to make such clear and convincing showing as would justify it in holding that the Attorney General or his subordinates had gone beyond the limit of sound discretion in denying bail and the Court found that as a witness appellant had ample opportunity to testify that he was not a member of the Communist Party or a part of the Communist movement at the date of his last arrest. While on the witness stand appellant claimed his conditional privilege against self-incrimination and upon that ground declined to testify touching his Communistic relations. We think that his refusal to so testify should not have operated against him. *Blau* v. *United States,* decided by the Supreme Court on Dec. 11, 1950.

We think that a fair consideration of the factors above set out in their aggregate require that appellant should have been granted bail in some reasonable amount. This view is more nearly in accordance with the spirit of our institutions as it relates even to those who seek protection from the laws which they incongruously seek to destroy. See *Carson* v. *Landon, Dist. Director, etc.* (CCA 9), decided Dec. 16, 1950; *United States* v. *Dist. Director, etc.,* 169 Fed. (2d) 747, 752 (CCA 2).

The result is that the order dismissing the writ of habeas corpus is reversed and the case remanded to the district court with directions to proceed in accordance with the views herein expressed.

Reversed.

Filed March 26, 1951. John W. Menzies, Clerk.

APPENDIX "B"

DISTRICT COURT DECISIONS AFFECTING REVOCATION OF BAIL IN DEPORTATION PROCEEDINGS KINDRED IN CIRCUMSTANCES TO THE CASE AT BAR.

CHICAGO, ILL.—Judge James Campbell. Cases: Vincent Andrulis, James Keller, Moses Resnikoff. (Released on original bail.)

CHICAGO, ILL.—Judge Walter LaBuy. Cases: Peter Kushnir, Fred Licheta. (Released on original bail.)

CLEVELAND, OHIO—Judge Emerich B. Freed (N. D. Ohio). Cases: David Schlossberg, No. 27805; Joseph Lukas, No. 27806. (Released on original bail.)

DALLAS, TEXAS—Judge William H. Atwell (N. D. Tex.). Case: Jose Estrada, No. 4125. (Released on original bail.)

DETROIT, MICH.—Judge Arthur Lederle (E. D. Mich.). Case: James Papandreau, No. 9908. (Released on original bail.)

DETROIT, MICH.—Judge Arthur Koscinski (E. D. Mich.). Case: Henry Podolski, No. 9884, *Podolski* v. *Baird*, 94 Fed. Supp. Adv. Ops. 294. (Released on original bail.)

DULUTH, MINN.—Judge Dennis Donovan (D. Minn.). Case: Knut Heikkinen, No. 1101. (Released on bail pending appeal.)

HAMMON, IND.—Judge Luther Swygert. Case: James McKay. (Released on original bail.)

MINNEAPOLIS, MINN.—Judge Gunnar Nordbye (D. Minn.). Case: Peter Warhol, No. 3517, *Warhol* v. *Shrode, et al.*, 94 Fed. Supp. Adv. Ops. 229. (Writ granted. Bail increased from $1,000 to $2,500.)

MILWAUKEE, WIS.—Judge Robert E. Tehan (E. D. Wis.). Cases: James Hilty, Nick Stess. (Released on original bail.)

NEW YORK, N. Y.—Judge Sylvester Ryan (S. D. N. Y.). cases: Frank Borich, and 15 others, *United States, ex rel. Klig, et al.* v. *Schaughnessy*, 94 Fed. Supp. Adv. Ops. 157. (Released on original bail.)

PITTSBURGH, PA.—Judge Owen M. Burns (W. D. Pa.). Case: Vincent Kemenovich. (Released on $10,000 bail pending argument on writ.)

ST. LOUIS, MO.—Judge Rubey M. Hulen (E. D. Mo.). Case: Antonio Sentner, No. 7573. (Released on original bail.)

SAN FRANCISCO, CAL.—Judge Michael Roche (N. D. Cal.). Cases: William Heikkila, No. 30126; Ernest Fox, No. 30115; Nat Yanish, No. 30114. (Released on original bail.)

SEATTLE, WASH.—Judge John Bowen (W. D. Wash.). Cases: Ernest Mangoang, No. 2640; Boris Sassief. (Released on original bail after remand.)

